Supreme Court, U.S.
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No. 02-632

In The

SUPREME COURT OF THE UNITED STATES

ZACHARIAH LOGIODICE,

Petitioner,

-v-

TRUSTEES OF MAINE CENTRAL INSTITUTE (MCI), DOUGLAS C. CUMMINGS, JOHN MARQUIS, TERRANCE C. McCANNELL, and MAINE SCHOOL ADMINISTRATIVE DISTRICT NO. 53,

Respondents,

ON PEITITION FOR A WRIT OF CENTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

RESPONDENT MCI'S BRIEF IN OPPOSITION

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IDENTIFICATION OF PARTIES

AND

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

This brief is submitted on behalf of Respondents Douglas C. Cummings, John Marquis, and the Trustees of Maine Central Institute (referred to collectively as MCI). Maine Central Institute has issued to the public shares of its capital stock, which are traded on the American Stock Exchange. No parent, subsidiary, or affiliated corporation has issued shares of stock to the public.

QUESTION PRESENTED

Do this court's rulings in *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288 (2001), and *West v. Atkins*, 482 U.S. 42 (1988), compel a finding that an independent school is a state actor when, by contract with a public school district containing no other high school, it provides a high school education to students living in the district?

STATEMENT OF THE CASE

Maine School Administrative District 53 (M.S.A.D. 53) comprises three towns. The only high school within the district is Maine Central Institute, an independent school continuously operated since 1866. By contract, MCI provides a high school education to students living in M.S.A.D. 53. Eighty percent of MCI's students come from M.S.A.D. 53, while fifty-one percent of MCI's revenue is received pursuant to the contract. Under the terms of the contract, student discipline is delegated to MCI.

M.S.A.D. 53 is governed by a board elected by the public. MCI is governed by a private Board of Trustees. At the time of the incident giving rise to Petitioner's complaint, two members of the MCI Board of Trustees were also members of the M.S.A.D. 53 Board. The dual board participation of these two members was coincidental. There is no contractual provision requiring cross membership between the boards of M.S.A.D. 53 and MCI.

One term of the contract between MCI and M.S.A.D. 53 provides for a Joint Committee composed of representatives of each entity. This joint board exerts no authority over MCI's operations.

Petitioner Logiodice was suspended for 10 days following a confrontation with school personnel. Because the circumstances of the confrontation suggested Petitioner might be dangerous to himself or others, the suspension was extended until Petitioner could submit himself to a safety evaluation by a psychological professional. The actual suspension totaled 17 school days, during which Petitioner

was not afforded a hearing. M.S.A.D. 53 objected to MCI's handling of Petitioner's suspension but was without authority and unable to coerce, direct, or persuade MCI to adopt a different course of action.

The United States District Court for the District of Maine granted MCI's motion for summary judgment on Petitioner's Fourteenth Amendment due process claims. On appeal a divided First Circuit ruled, *inter alia*, that MCI was not a State actor pursuant to *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288 (2001), and *West v. Atkins*, 482 U.S. 42 (1988).

REASONS FOR DENYING THE WRIT

The First Circuit's decision in this case presents no conflict with the decision of any other United States court of appeals. It does not address any important question of federal law needing to be settled by this court. Instead, it legally resolves a dispute over a single disciplinary decision governed by an idiosyncratic institutional contract. Further constitutional analysis is unlikely to provide guidance with respect to any widespread educational practice or recurrent circumstance affecting other schools and students.

As this court noted in *Brentwood Academy*:

> [S]tate action may be found if, though only if, there is such a "close nexus between the State and the challenged action" that seemingly private behavior "may be fairly treated as that of the State itself."

> What is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity.

Brentwood Academy, 531 U.S. at 295 *(citation omitted)*. The record in this case demonstrates that MCI's private behavior cannot fairly be treated as that of the State itself.

The separation of MCI's authority from that of the State is of fundamental importance. The disciplinary decision against Petitioner was undertaken against the wishes of the State and despite strenuous objections by public school board officials.

Beyond that, a factual comparison between the Tennessee Secondary School Athletic Association and MCI confirms that MCI, unlike the Athletic Association, is not a state actor. The Athletic Association was a statewide entity without any parallel public organization; MCI is a single high school serving three towns within a state. Each public school member of the Athletic Association was afforded a vote in the election of members to the Association's governing boards; M.S.A.D. 53 members have no right to determine members of MCI's Board of Trustees. Public school officials controlled and actually performed Athletic Association functions; public school officials perform no MCI functions and indeed found they were unable to influence MCI's actions when they disagreed with them. The only real point of similarity between the Athletic Association and MCI has to do with percentage of participation: eighty four percent of the Athletic Association's member schools were public, while 80 percent of MCI's students come from M.S.A.D. 53.

Comparison of MCI's actions to those at issue in *West v. Atkins* reveals similar divergences. The defendant in *West* was a prison, an institution traditionally and historically operated by the exercise of sovereignty. The plaintiff's claim arose out of the State's constitutional obligation to provide medical treatment to prisoners. The prisoner had no choice in the medical care provided. In contrast, as the District Court in this case noted, providing an education is not traditionally the exclusive prerogative of the State. The right in question—a free public education—is statutory rather than constitutional, and students have a choice whether to accept the free education offered by the State or pay tuition to attend school elsewhere.

Finally, this case presents no question of widespread public importance. Were this court to apply *Brentwood* and *West* to the singular contractual circumstances presented by petitioner, Maine School Administrative District 53, and MCI, the resulting decision would provide little guidance to public school systems, independent schools, parents, or students in other places.

CONCLUSION

Because no constitutional issue of consequence is presented, Mr. Logiodice's petition for writ of certiorari should be denied.

Respectfully submitted,

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